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IN THE

Supreme Court of the United States

Term, 1959

No. 442

LOUIS J. GRIMALDI

v.

LOCAL NO. 9, JOURNEYMEN BARBERS, HAIRDRESSERS AND COSMETOLOGISTS INTERNATIONAL UNION: EDWARD MAGRISE, President; VINCENT PACE, Secretary; AFL-CIO; JOSEPH MOLLE and JAMES FRANGELLI,

Petitioners

Petition for a Writ of Certiorari to the Supreme Court of Pennsylvania

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TABLE OF CONTENTS

	Page
OPINION BELOW	1
JURISDICTION	2
QUESTIONS PRESENTED	2
CONSTITUTIONAL PROVISIONS INVOLVED	2
STATEMENT OF THE CASE	3
REASONS FOR GRANTING THE WRIT	5
CONCLUSION	18
APPENDIX:	
A. Copy of Opinions Below	19
B. Text of Constitutional Provisions Involved	46

TABLE OF AUTHORITIES

Cases:

American Federation of Labor v. Swing, 312 U.S. 321 (1940) 6, 11, 17

Bakery & Pastry Drivers v. Wohl, 315 U.S. 769 (1942) 7, 11, 13

Building Service Employees International Union, Local 262, et al., v. Gazzam, 339 U.S. 532 (1950) 7, 8, 11

Cafeteria Employees Union, Local 302 v. Angelos, 320 U.S. 293 (1943) 7, 11, 13, 16, 17

Carpenters & Joiners Union of America, Local 213 v. Ritter's Cafe, 315 U.S. 722 (1942) 7

Giboney v. Empire Storage & Ice Co., 336 U.S. 490 (1949) 7, 8

Cases:—*Continued*

Page

Hughes v. Superior Court of California, 339 U.S. 460 (1950) 7, 8

International Brotherhood of Teamsters, Local 309 v. Hanke, 339 U.S. 470 (1950) 7, 8, 10, 14, 15, 17

International Brotherhood of Teamsters, Local 695, v. Vogt, 354 U.S. 284 (1957) 8-9, 10, 11, 17

Newell v. Chauffeurs, Teamsters, Local 795, et al., 181 Kans. 898, 317 P.2d 817, rehearing denied 182 Kans. 205, 319 P.2d 171 (Kans. S. Ct. 1957), reversed per curiam 356 U.S. 341 (1958) 9, 10, 11, 16

Senn v. Tile Layers Protective Union, 301 U.S. 468, 57 S. Ct. 857 (1937) 12-13

Thornhill v. Alabama, 310 U.S. 88 (1940) 6, 9, 10, 16, 17

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PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA

Local No. 9, Journeymen Barbers, Hairdressers and Cosmetologists International Union; Edward Magrise, President; Vincent Pace, Secretary; Joseph Molle and James Frangelli (hereinafter referred to as "Union" or "Local No. 9"), pray that a Writ of Certiorari issue to review the judgment of the Supreme Court of Pennsylvania in this case.

OPINION BELOW

The Opinion of the Court of Common Pleas No. 5 of Philadelphia County (Record 149) is unreported. The Opinion of the Supreme Court of Pennsylvania is reported at 397 Pa. 6 (1959).

JURISDICTION

The Decree of the Supreme Court of Pennsylvania was entered on July 2, 1959 (Record 171-183; Dissenting Opinion, Record 184-196). The jurisdiction of this Court is conferred by 28 U. S. C. 1257.

QUESTIONS PRESENTED

1. Whether a state court may constitutionally issue a broad blanket injunction enjoining the picketing of the business of a self-employed working proprietor where the sole purpose of the picketing is to persuade him to join the Union and to advertise to the public that he operates a non-union establishment.

2. Whether the doctrine laid down in *Thornhill v. Alabama*, 310 U.S. 88 (1940), that picketing is constitutionally protected as an exercise of the right of free speech, should not be clarified in view of the fact that some doubt as to its vitality was cast upon it by subsequent cases, only to have it apparently reaffirmed in the *per curiam* opinion of *Newell v. Chauffeurs, Teamsters, Local 795, et al.* 356 U. S. 341 (1958).

CONSTITUTIONAL PROVISIONS INVOLVED

United States Constitutional Amendment I [Appendix, Infra., p. 46]

United States Constitutional Amendment XIV, Section 1 [Appendix, Infra., p. 46]

STATEMENT OF THE CASE

The plaintiff in this case, Louis J. Grimaldi, is the sole owner and operator of a barber shop located in the City of Philadelphia, Pennsylvania. He operates his place of business without any employees.

The defendant, the petitioner herein, is Local No. 9, Journeymen Barbers, Hairdressers and Cosmetologists International Union, AFL-CIO, and certain of its agents. It is a labor union engaged in representing barbers, hairdressers and the like and includes among its members sole proprietor-operators who, like the plaintiff, work at their trade and hire no employees.

Since February, 1955, the union has been engaged in an organizing campaign in the Philadelphia area. The purpose of this organizing drive has been to persuade eligible individuals, including owner-operators or working proprietors who have no employees, to join Local No. 9 or Employer Guild No. 31, the latter being an autonomous organization composed of proprietors who, like the plaintiff, have no employees. During the course of this organization campaign Grimaldi was asked to join the union or its affiliate, Employer Guild No. 31.

Grimaldi is a member and officer of the Pennsylvania League of Master Barbers, an organization composed of proprietors, owners and employers in the barber trade or industry. Its purposes are social, educational and legislative rather than of an economic or trade union nature. Nothing in the Constitution or rules and regulations of the League prohibits any of its members from joining the defendant Local No. 9 or Employer Guild No. 31. In fact, a large number of the League members belong to one or the other of these organizations. Moreover, the Constitution of the union makes Grimaldi eligible for full membership rights with full voting and other membership privileges.

In April of 1956, a meeting was held between repre-

sentatives of Local No. 9 and representatives of the Pennsylvania League of Master Barbers, including Grimaldi. At this meeting, Grimaldi and others were urged to join the union and the economic advantages to be derived from such membership were presented to them.

On July 31, 1956, the union began to picket Grimaldi's barber shop in an effort to persuade him to join the union and to publicize the fact that he was not a member of the AFL-CIO.[1] The picketing was at all times conducted peacefully.

On August 3, 1956, this action was begun by the filing in the Court of Common Pleas No. 5 of Philadelphia County of a Complaint (Record, page 3) and a Rule To Show Cause Why a Preliminary Injunction Should Not Be Issued (Record, page 7). A hearing on the Rule To Show Cause was held on August 8, 1956, at which time the union agreed to withdraw its pickets pending determination of the matter. On November 7, 1956, the Answer was filed, (Record, page 8) and in it were raised the federal questions on which review is now sought. It was contended in the Answer that the union's conduct was constitutionally protected by the First and Fourteenth Amendments to the Constitution of the United States (Record, pages 11, 12 and 13).

On March 20, 1957, a final hearing was held. The union's Request for Findings of Fact and Conclusions of Law were submitted following the hearing (Record, page 141). The requested Conclusion of Law No. 1 (Record, page 147) provided that "the picketing in the instant case was constitutionally protected by the First and Fourteenth Amendments to the Constitution of the United States . . . as an exercise of the right of free speech." The trial court's

[1] The pickets carried signs which said, "Patronize barber shops that display this card—AFL-CIO"; "This shop does not display union shop card of AFL-CIO."

adjudication refused the requested Conclusion of Law No. 1 (Record, page 157). Exceptions to the Adjudication were then filed by the union (Record, page 159) in which exception was taken to the court's refusal "to affirm or adopt requested Conclusion of Law No. 1" (Record, page 161). The Opinion sur Exceptions to Adjudication (Record, page 162) dismissed the exceptions and entered a Final Decree (Record, page 168) enjoining the picketing of Grimaldi's place of business. The union then appealed to the Supreme Court of Pennsylvania and contended in its brief and oral argument that this picketing was constitutionally protected by the First and Fourteenth Amendments to the Constitution of the United States as an exercise of free speech. The Opinion of the Court (Record, pages 171-183) equated peaceful picketing for organizational and advertising purposes with coercion. In disregard of the prohibition against the issuance of blanket injunctions the Court sustained the trial court's injunction.

REASONS FOR GRANTING THE WRIT

1. The Supreme Court of Pennsylvania has decided in this case that peaceful picketing for the purpose of persuading a working proprietor-barber to join a union and for the purpose of advertising his non-union status is not within the constitutional protection given to the right of free speech. Such a decision is in plain derogation of this Court's long-established doctrine that a blanket prohibition against picketing is unconstitutional.

An examination of the decisions of this Court for the past twenty years reveals a withdrawal of some of the broad constitutional protection originally given to peaceful picketing. This Court has over the years given more latitude to the states in the formulation of a policy regarding picketing. But the Court has consistently adhered to its early view

that any blanket prohibition against picketing by a state is a violation of the First and Fourteenth Amendments of the Constitution of the United States.

The leading case in this area is *Thornhill v. Alabama*, 310 U. S. 88 (1940), in which the Supreme Court first enunciated the doctrine that picketing is constitutionally protected as an exercise of the right of free speech. The Court there held unconstitutional a state statute containing a blanket prohibition against all forms of picketing. The Court, speaking through Mr Justice Murphy, said:

> "In the circumstances of our times the dissemination of information concerning the facts of a labor dispute must be regarded as within that area of free discussion that is guaranteed by the Constitution." 310 U. S. at p. 102.

Following the *Thornhill* doctrine, the Court extended its scope to picketing where an employer-employee relationship was not involved. In *American Federation of Labor v. Swing*, 312 U. S. 321 (1941), a union of beauty parlor workers attempted to unionize Swing's beauty parlor and when its efforts proved unsuccessful turned to picketing. The Illinois courts entered a permanent injunction on the ground that according to the common law of the state peaceful picketing is unlawful when conducted by strangers to the employers (non-employees). The Court held that "such a ban on free communication is inconsistent with the guarantee of freedom of speech." 312 U. S. at p. 325.

Swing points out clearly the constitutional protection afforded to picketing as a means of communication in a free society. While *Thornhill* dealt with picketing by a majority, *Swing* went further in holding that a union which represented *none* of the employees could lawfully picket. The Court recognized that "the circle of economic competition" could not be drawn by a state so small "as to contain only an employer and those directly employed by him." The "interdependence of economic interests" of those engaged

in the same industry was held to be sufficient to accord constitutional protection to the efforts of a union to communicate its dispute with a part of that industry to the general public.

In 1942 this Court both approved and rejected the approach of the states to problems of picketing. In *Carpenters and Joiners Union of America, Local 213 v. Ritter's Cafe*, 315 U. S. 722 (1942), the Court affirmed a Texas injunction against the picketing of a restaurant because the restaurant owner had employed a non-union contractor to build his home. The Court said that the state could constitutionally confine picketing to establishments having a direct industrial connection with the dispute. On the same day as *Ritter* was decided, the Court in *Bakery and Pastry Drivers v. Wohl*, 315 U. S. 769 (1942), held that New York could not constitutionally prohibit a union from picketing bakeries in an effort to have independent peddlers, who bought from the bakeries, conform to union standards. See also *Cafeteria Employees Union Local 302 v. Angelos*, 320 U. S. 293 (1943).

In the next picketing case before the Court, *Giboney v. Empire Storage and Ice Company*, 336 U. S. 490 (1949), the Court upheld the right of a state to limit peaceful picketing for the unlawful purpose of violating the state prohibition against combinations in restraint of trade. While the Court upheld the right of the state to regulate picketing for this statutorily proscribed objective, it declared that a state still was not permitted to prohibit free communication aimed at achieving the constitutionally guaranteed right to organize.

One year later, the Court decided three cases which spelled out its reliance upon state policy in determining the propriety of the objective of picketing: *Hughes v. Superior Court of California*, 339 U. S. 460 (1950); *International Brotherhood of Teamsters, Local 309 v. Hanke*, 339 U. S. 470 (1950); *Building Service Employees International Union, Local 262, et al. v. Gazzam*, 339 U. S. 532 (1950). *Gazzam*, which was decided by a unanimous court, upheld

an injunction against picketing on the ground that the object of the picketing, to compel an employer to force his employees to join the union, was contrary to the public policy of the State of Washington. Mr. Justice Minton pointed out in his opinion, however, that it had not been contended that organizational picketing violated the state policy and that the decree did not embrace organizational picketing. 339 U. S. at p. 540, Any such blanket prohibition against all picketing would have been violative of the First Amendment.

The *Hughes* case upheld the right of California to enjoin picketing to compel employment of a certain percentage of employees of a particular racial origin. The Court said that California was not prohibited "from securing respect for its policy against involuntary employment on racial lines by prohibiting picketing that would subvert such policy." 339 U. S. at p. 466. Both *Gazzam* and *Hughes* were decided by a unanimous court.

In *Hanke*, which we shall discuss in detail later in this petition, the Court held that a state could enjoin picketing of a business conducted by the owner without employees for the purpose of compelling the owner to observe certain union standards. The Washington injunction, Mr. Justice Frankfurter warned, banned picketing under very special circumstances. The Court's action was not to be interpreted as sustaining any broader limitations. Only four members of the Court joined in the opinion. Mr. Justice Minton, in a very provocative dissent, argued that the Court's opinion constituted a departure from the *Giboney* and *Gazzam* principles which allowed the injunction only of "abusive" picketing.

With one exception, no further picketing-free speech cases were before the Supreme Court until *International Brotherhood of Teamsters, Local 695 v. Vogt*, 354 U. S. 284 (1957). In that case, the Supreme Court of Wisconsin had made a finding that the purpose of the picketing was to coerce an employer to compel its employees to join the

union. The Court by a 6-3 vote affirmed the issuance of the injunction.

The opinion of Mr. Justice Frankfurter, speaking for the Court, reviews all of the above-mentioned picketing cases. He concludes:

> "This series of cases, then, established a broad field in which a State, in enforcing some public policy, whether of its criminal or its civil law, and whether announced by its legislature or its courts, could constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy." 354 U. S. at p. 293.

The opinion then goes on to state that:

> "Of course, the mere fact that there is 'picketing' does not automatically justify its restraint without an investigation into its conduct and purposes. State courts no more than state legislatures, can enact blanket prohibitions against picketing. Thornhill v. Alabama and AFL v. Swing, supra." 354 U. S. at pp. 294-295.

Mr. Justice Douglas, speaking in dissent for the Chief Justice, Mr. Justice Black and himself, complains that the Court "has now come full circle" from *Thornhill*. He says that state courts are now free to prevent picketing for any reason other than a blanket policy against all picketing.

Mr. Justice Douglas' concern about the Court's "formal surrender" in *Vogt* does not seem justified by the Court's action in the latest picketing case to come before it. In *Newell v. Chauffeurs, Teamsters Local 795, et al.*, 181 Kan. 898, 317 P. 2d 817, *rehearing denied*, 182 Kan. 205, 319 P. 2d 171 (Kansas Supreme Court, 1957), *reversed per curiam*, 356 U. S. 341 (1958), the Kansas court affirmed an injunction against the picketing of a dairy. The court said that the picketing was coercive simply because it was aimed at the strangulation of the employer's business for the purpose of hastening the employer's recognition of the union's demands. "Coercive picketing is unlawful and contrary to

the public policy expressed by the legislature of Kansas," said the Kansas Supreme Court in justifying its injunction of the picketing.

With this pronouncement of Kansas public policy and of the violation of that policy by the picketing, it would seem that *Newell* falls within the *Hanke-Vogt* pattern. But not so. The Supreme Court granted certiorari and reversed per curiam as follows:

> "PER CURIAM—The petition for writ of certiorari is granted and the judgment of the Supreme Court of Kansas is reversed. Thornhill v. Alabama, 310 U. S. 88, 98."

Newell makes clear that this Court has not surrendered the *Thornhill* doctrine. Peaceful organizational picketing is still "within that area of free discussion that is guaranteed by the Constitution." 310 U. S. at p. 102. The Kansas Supreme Court went too far in equating otherwise unobjectionable picketing with coercion and in condoning the issuance of what was in effect a blanket injunction of proper picketing.

By way of summary, then, we may say that a state court can constitutionally enjoin picketing in a particular case if the particular picketing has an objective which violates the legitimate public policy of a state. However, a state may not issue a blanket injunction against all picketing. Nor may a state constitutionally equate picketing itself with coercion or with a violation of state policy.

Examination of the facts of this case reveals that no proper basis existed for the issuance of the injunction. The picketing in the instant case had no improper or illegal objective violative of state policy. Rather, the picketing had two eminently respectable purposes. One purpose was organizational: to attempt to persuade the non-union working proprietor-barber to join the Union. Organizational purposes are always a proper objective of picketing and

hence picketing for such purposes is constitutionally protected and cannot be enjoined. *AFL v. Swing* supra; *Bakery and Pastry Drivers v. Wohl*, supra; *Cafeteria Employees Union, Local 302, v. Angelos*, supra. See also *Building Service Employees International Union, Local 262, v. Gazzam*, supra, and *International Brotherhood of Teamsters, Local 605, v. Vogt*, supra.

Both the Chancellor and the trial court conceded that the purpose of the picketing was organizational (156a, 167a). Yet the Chancellor found that the picketing constituted "coercion" because it was aimed at securing plaintiff's membership in the defendant union (156a). Similarly, the trial court equated peaceful picketing for organizational and advertising purposes with coercion. According to the reasoning of the Chancellor and the trial court (organizational) picketing is enjoinable because by its very nature it is coercive. This would appear to be precisely the line of reasoning which was so summarily condemned by this Court in *Newell*.

The courts below apparently believed that organizational picketing, although normally entitled to the constitutional protection accorded freedom of speech, loses its status as free speech in this case just because it was intended to persuade a working proprietor or owner-operator. But there is no reason to treat a working proprietor differently from any ordinary employee for the purpose of determining the constitutionality of the picketing in the instant case. Grimaldi is a working barber. As such he "gives shaves and haircuts and performs exactly the same duties as any barber in any barber shop anywhere" (63a). The fact that he is a proprietor of a barber shop does not remove him from the category of a working barber. He must be licensed like all other barbers, regardless of the fact that he owns a barber shop. As a working barber, he has the same interests and belongs to the same economic group as all other working barbers. He is in direct economic competition with every other worker in the industry.

That the so-called working proprietor is not entitled to any special treatment by way of insulation from picketing is a proposition that has ample support in prior cases. In the earliest case of *Senn v. Tile Layers Protective Union*, 301 U. S. 468, 57 S. Ct. 857 (1937), the plaintiff conducted a small tile contracting business in which he did much of the work himself. He occasionally employed one or two tile layers who were not members of any union. Senn himself was ineligible for membership in the defendant union because he had not served the necessary apprenticeship. The defendant union began picketing Senn's place of business in order to persuade him to sign the contract which would have prevented him from doing any work himself as a tile layer. Senn sought to enjoin the picketing on the ground that no labor dispute was involved and that such picketing interfered with his rights. The Wisconsin Court refused to grant him relief and this judgment was affirmed by the United States Supreme Court. The Supreme Court, speaking through Mr. Justice Brandeis, made this observation as to the constitutional question which was involved:

> "There is nothing in the Federal Constitution which forbids unions from competing with non-union concerns for customers by means of picketing as freely as one merchant competes with another by means of advertisements in the press, by circulars, or by his window display. Each member of the Union, as well as Senn, has the right to strive to earn his living. Senn seeks to do so through exercise of his individual skill and planning. The union members seek to do so through combination. Earning a living is dependent upon securing work; and securing work is dependent upon public favor. To win the patronage of the public each may strive by legal means." 301 U. S. at pp. 481-482.

Mr. Justice Brandeis further made clear that the source of defendants' right to picket this one-man business was found in the constitutionally protected right of freedom of speech:

"Members of a union might, without special statutory authorization by a state, make known the facts of a labor dispute, for freedom of speech is guaranteed by the Federal Constitution." 301 U. S. at p. 478.

Thus, in the *Senn* case, the Supreme Court of the United States specifically held that the picketing of a one-man business in order to persuade the owner operator to become a union shop was constitutionally protected as an exercise of the right of free speech.

The *Senn* case was followed by *Bakery and Pastry Drivers v. Wohl*, 315 U. S. 769 (1942). In that case a union picketed bakeries which sold to non-union peddlers in order to compel the individual peddlers to join the union and to work a six and not a seven-day week. The individual peddlers were independent contractors who conducted their own business and owned their own trucks. The Supreme Court reversed the decision of the highest court of the State of New York and held that the picketing was constitutionally protected as an exercise of the right of free speech. This case presents another example of the protected exercise by labor unions of their right peacefully to picket in order to persuade and encourage owner-operators of a one-man business to become members of the Union.

In *Cafeteria Employees Union v. Angelos*, 320 U. S. 293 (1943), a labor union picketed a cafeteria which was owned by several individuals who themselves conducted the business without the aid of any employees. Again, the Supreme Court of the United States, speaking this time through Mr. Justice Frankfurter, reversed the decision of the highest court of New York and found *that picketing of an owner-operated business which had no employees was constitutionally protected as an exercise of the right of free speech.* The Court stated that a state could not preclude working men in a particular industry from putting their case to the public in a peaceful way by a limitation of the right to picket. The *Angelos* case presented the same situa-

tion which is now before this Court. There the Supreme Court of the United States specifically upheld the constitutionally protected right of a union to picket an owner-operated business.

The courts below relied on the case of *International Brotherhood of Teamsters v. Hanke*, 339 U. S. 470 (1950). In the *Hanke* case, a labor union picketed a business which was owned and operated by a father and his three sons as co-partners; the plaintiffs had no employees. After the Hankes refused to respect the limitation on business hours which was contained in the standard union agreement, the union picketed in front of the Hanke business bearing a sign which read "Union People Look for the Union Shop Card." This conduct was restrained by the lower court and the action of the lower court was sustained by the Supreme Court of the State of Washington. The Supreme Court of the United States affirmed the action of the Supreme Court of the State of Washington.

In reaching its decision in this case, the Supreme Court of Pennsylvania relied heavily upon the *Hanke* case and both interpreted and applied the *Hanke* case as though it necessitated sustaining the action of the lower court in issuing the injunction.

Even though Mr. Justice Frankfurter, in the majority opinion in the *Hanke* case, cautioned that ". . . the injunctions are directed solely against picketing for the ends defined by the parties before the Washington court and this Court . . .," the Supreme Court of Pennsylvania in this case overlooked the material and significant factual differences between the *Hanke* case and this case and proceeded to interpret and apply the *Hanke* case as though its particular set of facts played no role in the opinions of the Supreme Court of Washington and of this Court, as though the *Hanke* case was authority for the enjoining of all picketing of self-employers (owners-barbers) regardless of the facts or issues present in any case.

There is a basic difference both as to the facts and issues. In *Hanke* the "agreement was intended to be applicable to 115 used car dealers in Spokane; all except 10 of which were self-employers with no employees." *In this case*, the union represents and has negotiated labor agreements covering and benefiting approximately 600 journeymen barbers employed by non-working owners and also represents approximately 400 working proprietors of barber shops in Philadelphia (Record, pages 107-108). The "industrial relationship" between this great number of organized barbers and owner-barbers on the one hand and the unorganized owner-barbers on the other hand is substantial and direct; wages, hours and working conditions contained in the labor agreements can effectively be adversely affected by the unorganized owner-barbers, all of whom work at the chair and have a direct community of economic interest with the organized journeymen barbers and owner-barbers. Obviously, therefore, the union here is *not*, as in the *Hanke* case, an outside group having but a relatively small and indirect interest. In the *Hanke* case the basic fact and issue which determined the policy there adopted by the Supreme Court of Washington was the finding that the union there involved had a relatively small interest in a situation in which 105 out of 115 used car dealers were self-employers with no employees.

By interpreting and applying *Hanke* outside of the scope of the issues presented by it, the Supreme Court of Pennsylvania has here erred. By failing to give due and full consideration to the facts and issues involved in this case and by disregarding the real and substantial interest of the union in this case, the Supreme Court of Pennsylvania has, in effect, proscribed picketing merely by setting artificial bounds unreal in the light of modern economic circumstances to what constitutes an industrial relationship or a labor dispute. The Supreme Court of Pennsylvania, by its action in this case, has acted in a manner akin

to the action of the Kansas Supreme Court in the *Newell* case; the effect of the decision of the Supreme Court of Pennsylvania is to prohibit all picketing of self-employers (owner-barbers) under any and all circumstances.

It has been mentioned above that the picketing in the instant case had two eminently respectable purposes. One of these was a purpose to organize. The other was a purpose to publicize: to inform the public of the fact of the non-union status of the plaintiff and his establishment. Surely, this situation presents a clear example of "the dissemination of information concerning the facts of a labor dispute which must be regarded as within that area of free discussion that is guaranteed by the Constitution." *Thornhill v. Alabama*, supra at p. 102. The defendant union could constitutionally have written letters or passed out circulars or inserted an advertisement in a newspaper to inform the general public of plaintiff's non-union status. It could also constitutionally advertise this fact by the more convenient and less expensive means of placards carried by pickets. See *Cafeteria Employees Union v. Angelos*, supra.

If, then, the picketing in the instant case (which had as its purposes only proper and legitimate objectives) was enjoined, it could only have been enjoined improperly. In effect what the court below has done is to hold that such picketing must be enjoined, regardless of purpose or objective, merely because it involved picketing of a working proprietor. The court below has held in effect that such picketing is coercive *per se* and has outlawed it in blanket fashion.

2. The Decree of the trial court as affirmed results in the outlawing of picketing for all purposes. The final decree provides that the union is enjoined from "(a) setting up or maintaining a picket line at plaintiff's place of business . . . (b) interfering in any way with the operation of plaintiff's business" (Record, page 168). Terms

of the injunction fail to make any distinction or delineation between what constitutes legitimate picketing and what is improper and unlawful picketing. That a failure to make such a distinction is, in and of itself, sufficient grounds for the reversal of any prohibition against picketing was made manifestly clear by this Court in *Cafeteria Employees Union, Local 302, v. Angelos*, supra. See *American Federation of Labor v. Swing*, supra. It is patent that a similar result must, of necessity, follow in the present matter. That the breadth of the injunctive order in the present matter far exceeds the bounds of any legitimate state restriction on picketing cannot be denied.

There has been no hint of violence in this case. The organizational picketing has at all times been of a peaceful nature. As such it is a legitimate instrument of persuasion and publicity. There has been no attempt to force a violation of law or contravention of public policy by attempting to restrain trade. The constitutional protection of this kind of picketing cannot be taken away by a blanket prohibition. The decree of the court below is flagrantly contrary to the principles announced in the *Thornhill* case, supra; and seemingly reiterated recently in the *Newell* case.

3. In view of the doubt cast upon the vitality of the *Thornhill* doctrine by subsequent cases, especially *Hanke* and *Vogt*, and in view of its sudden reaffirmation in a per curiam opinion in the *Newell* case, we urge the Court to take this opportunity to reconsider and to clarify the status of peaceful picketing as an instrument of persuasion and publicity.

The fact that the most recent pronouncement of this Court on the subject of picketing was handed down in a *per curiam* opinion, makes it somewhat difficult accurately or confidently to set forth the present state of the law. We respectfully submit that we need the guidance of this Court

to dispel the current confusion which surrounds this most important subject.

CONCLUSION

For all the foregoing reasons this Petition for Writ of Certiorari should be granted.

Respectfully submitted

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Appendix "A"

OPINION OF THE COURT

IN THE SUPREME COURT OF PENNSYLVANIA

EASTERN DISTRICT

No. 298 January Term, 1958

LOUIS J. GRIMALDI

v.

LOCAL NO. 9, JOURNEYMEN BARBERS, HAIRDRESSERS AND COSMETOLOGISTS INTERNATIONAL UNION; EDWARD MAGRISE, President; VINCENT PACE, Secretary; AFL-CIO; JOSEPH MOLLE and JAMES FRANGELLI,

Petitioners

Appeal from the Final Decree of the Court of Common Pleas No. 5 of Philadelphia County as of June Term 1956, 6964, in Equity.

MUSMANNO, *J.* Filed: July 2, 1959

Louis J. Grimaldi is the owner of, and the only barber in, a barber shop located at 1438 South 58th Street, Philadelphia. Thus, he has no employees, and at the same time he has no employer. He is a one-man operation, solely and exclusively. He opens his shop when he pleases, he closes it when it suits his will to do so. He has no labor trouble because he employs no labor. He has no dispute with an employer because, obviously, he has no employer. He is as much a one-man operation as a man on a unicycle. He has as much undisputed control over his barber shop as Robinson Crusoe had over his island on the Thursday before Friday arrived.

Although, as mentioned, Grimaldi has no labor problem within the confines of his domain, on July 31, 1956 a major trouble was deposited on his doorstep and a haunting threat began to walk his sidewalk, none of which dire visitations he provoked, and certainly did not desire. On that morning, there appeared outside his shop several men wearing sandwich signs calling upon Grimaldi to join Local No. 9, Journeymen Barbers, Hairdressers and Cosmetologists International Union (hereinafter to be referred to as Local No. 9). This union is made up of barbers, hairdressers and cosmetologists who are employees in barber and beauty shops owned by others. Grimaldi is not qualified for membership in this union because he is not an employee. As already stated, and as will be repeated, he is a one-man institution. He works for no one else. He toils only for himself. He cuts hair, shaves faces, administers shampoos, applies lotions and does all that is traditionally expected of a barber. As absolute owner of his place of business, and as master of himself and his work, he would be entirely out of place in a union composed of men who are employees in shops in which they do not have the slightest proprietary interest.

At meetings of Local No. 9, the discussions naturally revolve around such subjects as wages to be asked of employers, working conditions to be requested of employers, vacations to be sought of employers. Grimaldi could not participate in such discussions because it would be grotesque for him to ask himself how much salary he should pay himself, how much vacation he should allow himself, and what working conditions he should demand of himself

Nevertheless, on July 31, 1956, pickets appeared in front of Grimaldi's place of business with signs urging prospective customers to stay away. The picketing was effective. Many patrons turned on their heels when they read the signs; men with supplies refused to cross the picket line; deliveries of towels ceased. Stagnation was immediate and decisive. With customers frightened away, supplies cut

off, and laundry service severed, it could only be a matter of days until Grimaldi's business would expire like an undersea diver whose oxygen line has knotted. He appealed to the courts. He petitioned the Court of Common Pleas of Philadelphia County to restrain and enjoin Local No. 9, with its officers and members, from picketing his shop, from interfering with his business, and from intimidating or attempting to intimidate him to join Local No. 9.

After a hearing before Judge Waters, a preliminary injunction issued, and then, on March 20, 1958 [sic], a full hearing on the merits of the cause was heard before Judge Weinrott of Court of Common Pleas No. 5 who, on January 8, 1958, entered a final decree which granted the plaintiff the full relief prayed for. The defendants filed exceptions which were dismissed by Judge Reimel, speaking for the court en banc. Local No. 9 and its named officers and members appealed to this Court.

The decree must be affirmed. The picketing attempted by Local No. 9 is a flagrant violation of the law and cannot be supported. The picketing of a one-man establishment is an invasion of an American's freedom to determine his own economic destiny when he stands alone in an enterprise of his own. Labor unions have the right to picket for organizational purposes, that is, to persuade non-union employees of an establishment to join a union. Such peaceful picketing is constitutionally protected and cannot be enjoined. (*Pappas v. Local Joint Exec. Bd.*, 374 Pa. 34) But the picketing in this case was not for organizational purposes and could not be for that purpose. There are no non-union employees in Grimaldi's shop. On what basis then, can there be lawful picketing for organizing employees? What is to be organized? Who are to be united?

Local No. 9, through its secretary Vincent Pace, of whom more will be said later, inflicted upon Grimaldi an harassment and intimidation which violated his rights and prerogatives as a United States citizen. Because he refused

to join something he did not need and which could not help him he was threatened with economic extinction—and then the means to so extinguish him were put into motion. The action of Local No. 9 also obviously offended against the recognized policy of organized labor, as announced by responsible labor leaders at legislative hearings and as they have been reviewed by the courts in recorded legislation.

In the early part of January, 1956, Vincent Pace, accompanied by three other men of Local 9, called on Louis Grimaldi in his barber shop and endeavored unsuccessfully to persuade him to join the union. Two or three other conferences followed with similar negative results. Then, on April 16, 1956 Vincent Pace, accompanied by five members of Local 9, met with Louis Grimaldi and five other self-employed barbers who were members of a social and educational organization known as the Pennsylvania League of Master Barbers. At this meeting Pace endeavored to induce the self-employed barbers to dissolve the Pennsylvania League of Master Barbers and to join up with Local No. 9. When Grimaldi and his companions stated they were not receptive to this idea, Pace became very abusive. He called the officers of the Pennsylvania League of Master Barbers opprobrious names and used language which was profane, vicious and obscene. He then outrightly threatened the organization and its members, declaring that if the self-employed barbers did not join his local, he would bestow upon them the "kiss of death." His threats were all garbed in a vileness of speech that offends the very paper on which it is printed.

Grimaldi and his companions refused to be intimidated and returned to their respective barber shops. On the morning of July 31, 1956, when Grimaldi arrived at his establishment to open it for business, he found two of Pace's men sitting at the curb in a "cream colored Cadillac." They informed him that it was his "turn to join." Grimaldi replied, "Look, fellows, how many times must you be told that

I can't join your union? You know my position. I can't join your union", and went into his shop to prepare for the day's work.

Several minutes later one of the Cadillac-borne men knocked at Grimaldi's door and informed him: "Well, we called up the office and we were told to picket your shop." Grimaldi replied, "Gentlemen, there's a big, wide sidewalk. Go ahead."

A few minutes later police arrived in response to a call made by the operator of a beauty shop in the vicinity. Still later the police captain of the district appeared, and when Grimaldi asked him "What can you do about this?" the police captain answered: "I can't do anything about it. The only thing I can do here is to see that nothing happens."

The pickets then, as Grimaldi was to testify later, "walked around the shop, you know, back and forth, back and forth, back and forth." And as they walked back and forth, Grimaldi's customers walked away.

The lower court found that this picketing was coercive and illegal and therefore enjoinable. Local 9, through its attorneys, argue that the court's injunction was illegal under the Labor Anti-Injunction Act of June 2, 1937, P.L. 1196, 43 P.S. 206(a), et seq., as amended, which provides that no court shall have jurisdiction to issue an injunction "in any case involving or growing out of a labor dispute." But the Act has no application here. The Act specifically states that:

> "(a)—A case shall be held to involve or to grow out of a labor dispute when the case involves *persons* who are engaged in a single industry, trade, craft or occupation, or have direct or indirect interests therein, or who are *employees* of the same employer, or who are *members* of the same or an affiliated organization of employers or employees . . . (Emphasis supplied).

It will be noted that the statute uses the plural throughout. It speaks of "persons," of "employees," and of "members." But there are no persons, employees or mem-

bers in Grimaldi's shop. There is only one person there—and no employees or members at all.

In defining a labor dispute the Act says:

> "(c)—The term 'labor dispute' includes any controversy concerning terms or *conditions of employment*, or concerning the association or representation of persons in negotiating, fixing, maintaining, changing, or seeking to *arrange terms* or *conditions of employment* or concerning employment relations or *any other controversy arising out of the respective interests of employer and employee*, regardless of whether or not the disputants stand in the proximate relation of employer and employee, and regardless of whether or not the *employees* are on strike with the employer." (Emphasis supplied)

The Pennsylvania Labor Relations Act of June 1, 1937, P.L. (43 P.S. 611), which Local 9 also attempts to invoke in its behalf, offers no more legal support to its contention than the Labor Anti-Injunction Act. The Labor Relations Act specifically declares in its title that it is: "An act to protect the right of *employees* to organize and bargain collectively." (Emphasis supplied.) Here again we find the plural "employees." The Act then defines "labor dispute" as any controversy concerning:

> "1. Terms, tenure or conditions of employment; or concerning 2. The association or representation of persons negotiating, fixing, maintaining, changing or seeking to arrange terms or conditions of employment regardless of whether the disputants' stand in relation of employer and employee."

Under the specific wording of both statutes, there was no labor dispute at 1438 South 58th Street. There was no controversy over conditions of employment and there was no discord arising out of "respective interests of employer

and employee." Nor could there be, since there was no employer or employee at Grimaldi's shop. Moreover, the Local did not claim, and does not now claim, that Grimaldi was charging unfair prices or that he was working improper hours, or that he was undermining in any way the working conditions of journeymen barbers—those employed in other shops.

The picketing of Grimaldi's shop had no bearing on conditions of labor or employment in other shops. In an Illinois case it was held that where the picketing is not designed to improve the conditions of labor of other employees it will be enjoined. In that case, the Appellate Court of Illinois (Second District) said:

> "There is no contention made by defendant that plaintiffs [self-employer owners of gasoline stations] were failing to meet the standards of wages and employment fixed by unions and thereby jeopardizing the rights of working men in the same industry, for the plaintiffs had no employees to whom they could pay wages . . . It is therefore the considered judgment of this Court that Defendant's conduct was motivated by the illegal purpose of coercing self-employed owners and operators of gasoline stations who hired no employees to join the union and sign an agreement, the net effect of which would only stifle competition and in no way immprove the conditions of labor of its employees, and that Defendant exercised unlawful means to effectuate this purpose." (*Dinoffria v. International Teamsters Union*, 331 Ill. Appeal 139)

Grimaldi's industrial status is entirely different from that of the journeymen barbers who belong to Local 9. Grimaldi, as a one-man, self-employed barber, lives in an economic world entirely different from the one inhabited by the journeyman barber. The journeyman barber receives wages from his employer, he is saddled with no financial burden so far as the shop is concerned, he pays no rent,

buys no equipment, he suffers no personal loss in the event of fire or other disaster. The self-employed barber, on the other hand, carries the whole responsibility of the shop on his back, he owns or rents the place in which he conducts his business, he purchases the equipment, he pays all expenses in maintaining the shop and keeping it clean. If there is a fire, he personally suffers what is lost. Of course, all profits of the business are his, as all losses are borne by him.

Grimaldi's position in Philadelphia is not unique. There are some 2,600 barber shops in Philadelphia. Of this number, 1,700 are one-man shops, leaving only 900 which are manned multiple barbers. Why should 1,700 legitimately-owned and legitimately-operated institutions be required to conform to the standards of practically only one-half that number? While, of course, no one can or would object to the multiple-operated barber shop, there are many people who prefer being barbered in a one-man shop, and there is no reason in the law, no custom in society, and no argument in the armory of common sense which militates against the enjoyment of that one-man service.

The profession of barbering is an old and honored one. There was a time when the barber was, in a measure, also a surgeon. His functions included the dressing of wounds, blood-letting, and other surgical operations. While the barber of today, of course, no longer practices surgery in any form (intentionally!), he is still an indispensable and highly desirable factor in the pattern of today's civilization. And if the barber prefers to practice alone, no one may compel him to abandon his independence, while there is a public willing to avail itself of his specialized attention.

The one-man business in America contributes greatly to the well-being of the nation and its people. It is not necessary to point out that much of the magnificent industrial and commercial structure which is America's greatest wealth today originated in one-man operations

which pioneered, invented and dared to go forward alone in the development of ideas for the improvement of man's comforts and conveniences, as well as in protecting his physical and economic health.

Labor organizations are not concerned with one-man enterprises, except to encourage the proprietors in their endeavors, hoping that they will eventually achieve that success and expansion which will make it possible for them to employ workers, thereby increasing the prosperity and general well-being of the whole country. But until that happens, labor organizations allow these one-man affairs to proceed unhampered, unannoyed, and unpicketed. To picket a one-man job is like sticking pins into a hen that is sitting on eggs, concentrating on the important job of hatching vital forces which will contribute to the preservation of the human race. Labor organizations thus do not enter into the industrial barnyard until the new chickens are hatched and new workers are in being.

The purpose of labor organizations is to offer protection to multiple employees through collective bargaining, which is the backbone of the labor movement. It is the *e pluribus unum* of the industrial state. Where two or more workers are employed by the same employer, the way is open for them to form an organization for the purpose of discussing and negotiating with the employer on the subjects of wages and working conditions. Without collective bargaining, employees could be at the mercy of an employer who refuses to be guided by fundamental concepts in humanity and fair dealing.

But collective bargaining cannot possibly be used against an individual who has neither employees nor employer. The very word *collective* excludes the solitary individual. A man cannot collect with himself. And if an attempt is made to use collective bargaining against an individual who does not come within the purport of collectiveness, damage is done to the very cause of collective bargaining. The blade which is used to strike down the

innocent, becomes stained and blunted with injustice, thereby diminishing its capabilities for protecting those who are dependent on it for the protection of their inalienable rights.

The extraordinary tactics of Local 9 in this case cannot possibly help the cause of organized labor and could well draw the censure of labor leaders who are concerned about advancing the wholesome collective cause of labor and not in supporting ruffianism as displayed by Vincent Pace and his associates. Labor has come a long way since the era when the workman was practically looked upon as the serf of his master. The treatment of workmen in those years wrote a black page in the industrial history of mankind. Fortunately, that melancholy era is behind us. Legislation throughout the world and particularly in America has elevated the wage earner to a dignity which commands respect and consideration.

Wage earners who are welded together into a labor organization form an entity of responsibility and accountability which the law recognizes as a force for good in the economic and social society of the State. But Vincent Pace attempted to use Local 9 as a personal slingshot for the attainment of an objective which no labor organization ever heretofore attempted in Pennsylvania, so far as recorded litigation is concerned. The action of Local 9 detracts from labor's record and, if unrestrained, could in itself write a page of oppressiveness of which no labor organization would be proud.

If Local 9 were to be allowed to picket as it attempted to picket here, it would mean that no individual could perform any work of his own without the possibility of molestation. Even a member of Local 9 itself could be harassed by the shadows of marching sandwich men if he mowed the lawn in his own back yard, or built a little wall around his garden, or dug a pond for his children to play in, or helped his wife to paper the walls in the kitchen. Moreover, if what Local 9 contended for would become law, it

would mean that even a member of Local 9 when he retires would not be permitted to add to a pension or to social security payments. He could not knock together, with hammer and saw, a few little wood novelties to sell to passersby; he could not fashion with his hands some odd toys, souvenirs and knicknacks to vend to tourists in the little retreat to which he had withdrawn to spend the twilight days of his life; he would not be permitted to open a little store or to plant a garden in which to grow roses to bestow, for a consideration, on those who are distant from flower shops; he would be prohibited from roasting peanuts and selling them in little bags to those on the way to a sandlot baseball game. To picket a peanut vendor would be the ultimate in abuse of the weapon of picketing, but in principle it would be no different from what Local 9 endeavored to do against Grimaldi.

The picketing of a one-man business has dire and sinister possibilities. If Local 9 may drive a one-man barber shop out of business, why may not a hypothetical Local 999 do the same to a one-man lawyer's office? It could happen that the lawyers in large law offices would form a union and then demand that the country lawyer in his little office, or the city lawyer practicing by himself, join Local 999 or be humiliated and stripped of the emoluments of his profession by the placarding of his office with signs that he is unfair to other lawyers. Doctors in large hospitals could form a union and picket the country doctor, demanding that he make calls only at certain hours and charge only certain minimum fees, or run the risk of having no patients at all because of the omnipresent threat of picketing. If the one-man barber may be picketed, so may the one-man engineer, the one-man architect, the one-man artist, and the one-man author. And if that should happen, then liberty in America would be known only as the name of a statue.

Local 9 cites *Friedman v. Blumberg*, 342 Pa. 387, in support of its alleged right to picket a one-man business,

but in that case the business man involved, (a glazier), did employ a man to assist him, and the question in controversy was whether the employee should or should not be a union man. We repeat that in the instant case, there is no employee. The case of *Schwartz v. L. & L. S. Driv. Union*, 339 Pa. 353, also cited by Local 9, is equally inapplicable to the facts in this case.

Moreover, the Supreme Court of the United States has already spoken on this subject in a manner which opposes Local 9's contention. In the case of *Teamsters Union v. Hanke*, 339 U. S. 471, a business conducted by the owner himself without employees was picketed by a labor union endeavoring to compel compliance with a demand for a union shop. The trial court which heard the application for an injunction against the picketing union issued an injunction which the Supreme Court of the State of Washington affirmed. An appeal was taken to the Supreme Court of the United States on the averment that the injunction offended against the Fourteenth Amendment. The Supreme Court of the United States rejected the contention and said:

> "But when one considers that issues not unlike those that are here have been similarly viewed by other States and by the Congress of the United States, we cannot conclude that [the State of] Washington, in holding the picketing in these cases to be for an unlawful object, has struck a balance so inconsistent with rooted traditions of a free people that it must be found an unconstitutional choice. Mindful as we are that a phase of picketing is communication, we cannot find that [the State of] Washington has offended the Constitution."

Local 9 argues that it may not be enjoined from picketing Grimaldi as a one-man barber shop because picketing is a form of free speech, which is constitutionally guaranteed. While it is true that picketing is in the

realm of free speech, it is by no means synonomous with talking. Any person may, so long as he keeps the peace, does not disturb traffic, and offends no specific law, stand on a street corner and express his views on any subject he wishes, but when he substitutes a stick and a placard for his tongue, he leaves speech and takes up a species of communication which is by no means the equivalent of talking. Of course, it is a form of communication which is allowed where collective bargaining is involved, and we have repeatedly so held, but here there is no controversy between management and labor for the simple reason that Grimaldi is not management and he is not labor. Picketing cannot operate in a vacuum.

Local 9 is a journeymen barber's union, that is, it is made up of barbers who are employed by others. We have indicated that Grimaldi does not qualify for admission to Local 9. The pickets thus were demanding that Grimaldi do what he could not do in reason and common sense. They were demanding that he become subservient to the threatening Mr. Pace who does not live in Pennsylvania, is apparently not interested in Pennsylvania's welfare, and, so far as the record shows, had nothing to offer but menaces, abuse, and profanity.

The Supreme Judicial Court of Massachusetts had occasion to pass on the subject of picketing in a case where the facts were analogous to those involved here. In that case, *Saveall v. Demers*, 322 Mass. 70, the Court said:

> "Even if picketing is constitutionally protected in its aspect as speech, it must, because of its other aspects, be subject to some degree of regulation as to circumstance, manner, and even object, lest orderly existence be submerged in a flood of picketing by groups of people, having no peculiar right of their own, to make other people do what they do not wish to do and as free men are under no obligation to do . . . [We] have before us a case where, on the one hand, the

> contribution of the defendants' acts to the free interchange of thought in Fitchburg reaches the vanishing point, while on the other hand there is danger that the fundamental right of the plaintiff to work with his own hands to what he regards as his best advantage may be destroyed."

God gave man hands to use for self-protection and for the obtaining of food, shelter, raiment, and happiness for himself and for those dependent upon him. No one may deprive him of the benefits those hands may bring him when they are occupied in his own behalf. Those hands may be used to acquire property, the ownership of which will be protected by the Constitution of Pennsylvania which declares:

> "All men . . . have certain inherent and indefeasible rights, among which are those of enjoying and defending life and liberty, of acquiring, possessing and protecting property and reputation, and of pursuing their own happiness." (Art. 1, Sec. 1)

In the exercise of that constitutional right, one may acquire for himself a barber's chair, a carpenter's bench, or a bricklayer's trowel, and so long as he uses these implements himself and in a manner which does not adversely affect the economic rights of others, no one may dictate the method or the hours in which he may utilize them.

Local 9 was given every opportunity to present its case fully in the lower Court and we are satisfied that the Findings of Fact and Conclusions of Law are justified by the record. We, therefore, affirm the decree entered in the Court of Common Pleas, and place the cost on the appellants.

Mr. Justice Bok concurs.

Mr. Justice McBride files a dissenting opinion in which Mr. Justice Cohen joins.

DISSENTING OPINION

IN THE SUPREME COURT OF PENNSYLVANIA
EASTERN DISTRICT

January Term, 1958 No. 298

LOUIS J. GRIMALDI

v.

LOCAL NO. 9, JOURNEYMEN BARBERS, HAIRDRESSERS AND COSMETOLOGISTS INTERNATIONAL UNION: EDWARD MAGRISE, President; VINCENT PACE, Secretary; AFL-CIO; JOSEPH MOLLE and JAMES FRANGELLI,

Appellants

Appeal from the Final Decree of the Court of Common Pleas No. 5 of Philadelphia County as of June Term 1956, No. 6964, in Equity.

McBRIDE, *J.* FILED: JULY 2, 1959

The JOURNEYMEN BARBERS, HAIRDRESSERS, COSMETOLOGIST AND PROPRIETOR'[1] INTERNATIONAL UNION OF AMERICA consists of local unions and employers' guilds whose membership comprises barbers, hairdressers, wavers, marcellers, cosmeticians, manicurists, masseurs and proprietors (Article I, Section 1). In respect of barbers there are three classes: proprietor bar-

[1] The word "proprietors" does not appear in the caption but it does appear in the constitution of this union, which is a part of the record.

bers,[2] journeymen barbers,[3] and employer barbers.[4] Proprietor barbers and journeymen barbers (which are the two classes material here) are both eligible to join the union.[5]

Local No. 9 is a local of the International Union and Louis J. Grimaldi is a proprietor barber and therefore eligible to join the union. The conclusion of the majority to the contrary is not justified.

The court below found that approximately 400 proprietor barbers working in the Philadelphia area are members of the union and that they constitute half of the total force of union barbers in Philadelphia.

In February, 1955, Local 9 began an organizing drive

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[2] Article VIII, Section 5 (2) defines proprietor barbers as follows:

"A proprietor barber or beautician is defined as an owner or part owner of a shop, who habitually works with the tools of the trade."

As to such proprietor barbers Article VIII, Section 3, provides:

"Proprietor barbers or beauticians who are working with the tools of the trade and who do not employ one or more journeymen barbers or beauticians must become proprietor members of the local union to display the Union Shop Card."

[3] Article VIII, Section 5 (1) defines journeymen barbers, as follows:

"A journeyman barber or beautician is defined as a qualified employee barber or beautician who works with the tools of the trade, and is not an owner or part owner of a shop where one or more journeymen barbers or beauticians are employed full time."

[4] Article VIII, Section 5 (3) defines employer barbers as follows:

"An employer barber or beautician is defined as an owner, or part owner of a shop wherein one or more journeymen barbers or beauticians are employed full time."

[5] Article VIII, Section 5 (9) provides: "Any barber or beautician, journeyman, proprietor or employer, who works at the trade, and who is otherwise qualified, is eligible to membership in any local union, and all members are entitled to equal rights of membership, including the right to vote and hold office."

and in the course of it Grimaldi was asked to join the union.[6] Other meetings were held at each of which union representatives reiterated their request to Grimaldi to join the union. In the meantime, other similarly situated proprietor-barbers had been joining. At a meeting in April, Vincent Pace, an International Representative, did speak vulgarly and slightingly of the League and threatened to picket Grimaldi. However, Grimaldi's witnesses described some of these meetings as "amicable" although undoubtedly Pace was at times angry and contemptuous. Finally, having failed to persuade Grimaldi to join the union, two pickets commenced to walk up and down in front of his place of business carrying a sign containing a true statement.[7] As a result thereof plaintiff's business was harmed. The court below found "Picketing was at all times conducted peacefully in an attempt to persuade the plaintiff to join the union and to publicize the fact that he ran a non-union barber shop." Nevertheless the court below enjoined the local and other named defendants from (a) setting up or maintaining a picket line at plaintiff's place of business; (b) interfering in any way the the operation of plaintiff's business; (c) intimidating or attempting to intimidate or coerce any of plaintiff's customers or suppliers or otherwise interfering with plaintiff or his business. The question which immediately arises is whether this injunction is proscribed by the Labor Anti-Injunction Act of June 2, 1937, P.L. 1196, 43 P.S. 206a, et seq. That act withdraws jurisdiction from all courts of the Commonwealth to issue

[6] He is one of the secretaries of the Pennsylvania League of Master Barbers but the Constitution of that League does not prohibit its members from also joining the union. Consequently, a large number of its members are members of Local 9.

[7] The legend on the picket signs said:

"Patronize Barber Shops That Display This Card — AF of L—CIO."

"This Shop Does Not Display Union Shop Card of AF of L—CIO."

any restraining order or injunction which is "contrary to the public policy declared in this act" as well as any "case included within this act", Act of June 2, 1937, P. L. 1198, §4 as amended. The public policy provision of the act while guaranteeing to every worker freedom "to decline to associate with his fellows" also guarantees that such workers have the right to engage in "self-organization or in other concerted activities for the purpose of collective bargaining or *other mutual aid or protection*". Since this act prevents the issuance of injunctions in *labor disputes* it is important to remember that the act specifically provides in Section three, "a *person* or *association* shall be held to be a *person* participating or interested in a labor dispute if relief is sought against *him* or *it*, and if *he* or *it* is engaged in the same industry, craft or occupation in which such dispute occurs or has a direct or indirect interest therein. . . ." The majority opinion bases its conclusion, at least in part, upon the assertion that Grimaldi is neither an employer or an employee; and the word "persons" as used in a separate section of the act [8] is plural. But it is to be noticed at once that in order for a labor disptue to exist it is not necessary that Grimaldi be either an employer or an employee; he need be only a person engaged in the same industry, trade, craft or occupation as the other disputant. The majority says "It will be noted that the statute uses the plural throughout. It speaks of 'persons,' of 'employees,' and of 'members.' But there are no persons, employees or members in Grimaldi's shop. There is only one person there—and no employees or members at all." The majority seems to be of opinion that it requires more than one person on

[8] "(a)—A case shall be held to involve or to grow out of a labor dispute when the case involves *persons* who are engaged in a single industry, trade, craft or occupation, or have direct or indirect interests therein, or who are *employees* of the same employer, or who are *members* of the same or an affiliated organization of employers or employees . . ." (Italics supplied by the majority opinion.)

each side of the dispute. This quite clearly is not so. No one would seriously contend that a dispute between one employer and one employee would not constitute a labor dispute. (See 43 Purdons §206c(b)): It seems to me that there is a labor dispute here within the meaning of the Labor Anti-Injunction Act. Certainly Grimaldi is engaged in the same trade, craft and occupation and has the same indirect interest therein as the journeymen barbers who are members of this union. What happens in this craft or occupation, at least indirectly, affects both Grimaldi and the journeymen barbers. But even if this were not so certainly Grimaldi's position is identical with the approximately 400 proprietor-barbers who are members of the union. Whatever might be said as to the differences that may exist as between journeymen barbers and proprietor-barbers is not applicable between one proprietor-barber and another proprietor-barber. It must be conceded that Grimaldi performs exactly the same duties and is engaged in the same occupation as any barber in any barber shop anywhere. He must be licensed like all other barbers: he has the same economic interests and belongs to the same economic group as all other barbers. This dispute between Grimaldi and the union has economic repercussions upon the wages, hours of work and working conditions of all individuals in the industry and particularly upon the many journeymen barbers and proprietor barbers who are members of the union. Hence the union has a legitimate economic interest in peacefully persuading Grimaldi to join it and in advertising to the public that he is not a member.

In *Alliance Auto Service, Inc. v. Cohen*, 341 Pa. 283, 19 A.2d 152, the union, which had a dispute with Petrol, picketed the plaintiff's service stations presumably because they purchased Petrol's products. This Court found that a "labor dispute" existed within the meaning of the Labor Anti-Injunction Act because of the "common interest" of the plaintiff and the defendants in the industry.

We also held that an outdoor movie theatre run en-

tirely by members of a single family is subject to the Labor Anti-Injunction Act when involved in a labor dispute even though no "employee" in the strict sense of the word was involved. *Warren v. Motion Picture and Machine Operators*, 383 Pa. 312, 118 A.2d 168. In that case a corporation's attempt to discharge a union member and to have the work performed by a member of the family which owned the closed corporation was treated as giving rise to a labor dispute between the picketing union and the corporation.

The union has not forced Grimaldi through unlawful coercion or violence to join the union; they have simply insisted upon telling the public the true facts. If telling the truth about him caused Grimaldi to lose patronage, the loss is *dammum absque injuria*.

Time was when truth had an independent importance in our values regardless of who spoke it. Now it would seem that when truth is ineffectual because spoken by the humble, the oppressed, the minorities, it has constitutional significance but when spoken by the important, the powerful, or a labor union, it amounts to unlawful coercion. It seems quite clear, to me at least, that having told the truth about Grimaldi these defendants would not be subject even to damages for libel or slander. The truth is a defense in civil libel not because it does not hurt but because the injury inflicted by its telling will not be redressed by law. But the present case is the application of previous censorship even though under circumstances which would not warrant damages as a matter of post-censorship. There was a time when labor unions were weak and their organizing attempts were often futile. I agree that now that labor has become stronger it has a power to coerce. It must make us watchful to keep the balance even. But we go entirely too far when we condemn the telling of the truth by labor or anyone else no matter how powerful as being *unlawful* coercion. If there be an ultimate goal which the civilized enforcement of law seeks always to reach it is the ascer-

taining of and enforcement of truth. It is because I think that this labor union had a legitimate interest in the affairs of Grimaldi that I think we have reached a wrong result.

He is not an employer and hence the picketing is not for the purpose of having an employer coerce his employees to join the union. As I have noted above, it is immaterial that he is not an employee. It is quite clear that had he been an employee then there would have been no pretense that the union could have been enjoined from picketing for the purpose of persuading him to join the union. *Sansom House Enterprise v. Waiters and Waitresses Union*, 382 Pa. 476, 115 A.2d 746. This is true because the union employees have an identical interest with that of non-union employees in the wages, hours and working conditions of the same craft. It does not seem to me that this principle becomes inapplicable because Grimaldi is a proprietor barber in view of the fact that there are 400 such proprietor barbers in the union.

Inded, I believe that the injunction actually issued by the court below, in the light of the facts of this case, is a violation of the rights of defendants under Article I, Section 7 of the Pennsylvania Constitution, independently of the Labor Anti-Injunction Act. *Kirmse v. Adler*, 311 Pa. 78, 166 Atl. 566; *Friedman v. Blumberg*, 342 Pa. 387, 23 A. 2d 412; *Penna. Labor Relations Board v. Bartenders Union*, 361 Pa. 246, 64 A.2d 834; *Wilkes Sportswear, Inc. v. Int. Ladies Garment Workers Union*, 380 Pa. 164, 110 A.2d 418. In *Schwartz, et al. v. Laundry and Linen Supply Drivers' Union, Local 187*, 339 Pa. 353, 14 A.2d 438, generally referred to as the "bob-tail" case, plaintiffs brought suit against the union and the laundries in the City of Philadelphia to have declared illegal the provisions of the collective bargaining agreement between them which prohibited the laundries from accepting work from any "bob-tail" who was not a member of the union or who did not have a contract with it, and which prescribed the prices which

the "bob-tails" were to charge for their services and also imposed certain limitations upon the sale by "bob-tails" of their businesses. This Court, in an opinion by Mr. Justice Stern, found that the provisions of the contract relating to the prices which "bob-tails" were to charge and relating to the sale of a business by "bob-tails" were illegal as an unjustifiable restraint of trade. This Court ordered that an injunction be entered restraining the enforcement of these provisions of the contract *except as to those provisions requiring plaintiffs, the "independent business men," to become members of the union.*

In regard to the provision requiring the "bob-tails" to become members of the union, this Court recognized the importance to the union of restricting the hours and working conidtions of the "bob-tails" in order to avoid the lowering of the working standards of those who were already represented by the union. The opinion states:

> "It is somewhat difficult to understand what such membership is intended to accomplish. Insofar as it is designed to restrict the 'bob-tails' in the operation of the trucks which they themselves drive, and in their collection of laundry, to hours and working conditions prescribed by the union and embodied in its agreement with the laundry companies, *the union has a legitimate interest in thus seeking to protect the laundry employees against the lowering of working standards on the part of those who themselves, although in a different legal capacity, perform to some extent the same kind of labor.* So far, therefore, as a 'bob-tail' by becoming a member of the union, would be bound by its reasonable rules as to such matters, there would seem to be no valid objection to this provision." (Emphasis supplied.)

The holding of the *Schwartz* case thus establishes that there is no public policy of this Commonwealth preventing a labor union from organizing the so-called "independent

business men". This right is based on the direct connection between the income, working conditions and hours of work of the owner-operator or the self-employer and the wage rates, working conditions and hours of work of the union members.

In *Cafeteria Employees Union v. Angelos*, 320 U.S. 293, a labor union picketed a cafeteria which was owned by several individuals who themselves conducted the business without the aid of any employees. The Supreme Court reversed the Court of Appeals of New York and found that picketing of an owner-operated business which had no employees was constitutionally protected as an exercise of the right of free speech.

In *International Brotherhood of Teamsters, Local 309 v. Hanke*, 339 U.S. 470, the union picketed the plantiff's business which was owned and operated by him and his three sons as co-partners. Plaintiffs had no employees, but ran their business by themselves. The union picketed their place of business in order to persuade them to respect the limitation on business hours in the collective bargaining agreement between the union and other employers in the same industry. The action of the Supreme Court of Washington in concluding that such picketing violated the public policy of the State of Washington was not condemned. The Supreme Court so concluded solely on the basis that it ought not to interfere within the domain of a state's public policy; but there is no such policy in Pennsylvania. *Schwartz v. Laundry & Linen Drivers' Union, supra.*

In the leading case of *Coons v. Journeymen Barbers, Hairdressers and Cosmetologists Int. Union*, 222 Minn. 100, 23 N.W.2d 345, the plaintiff was the operator of a one man barber shop which was picketed by the defendant union for the purpose of inducing him to join the union. The signs used by the union were as same as the signs used in the present case. The Supreme Court of Minnesota stated:

> "Decisions holding that peaceful picketing for the purpose of inducing one operating a business without employees to join a union recognize both the right of a person to operate his business without employees and without joining a union, and the right of a union, in the exercise of the constitutional right of freedom of speech secured to its members by the Fourteenth Amendment, to proclaim those facts for the purpose of influencing the public in their dealings with him, Naprawa v. Chicago Flat Janitors' Union, 315 Ill. App. 328, 43 N.E. 2d. 198 (leave to appeal denied, 382 Ill. 124, 46 N.E. 2d 27); O'Neill v. Bldg. Service Employees Int'l Union, 9 Wash. 2d 507, 115 P. 2d 622, 137 A.L.R. 1102."

In the recent case of *Journeymen Barbers, Hairdressers and Cosmetologists Int'l Union, Local 687 v. Pollino*, 22 N.J. 389, 126 A. 2d 194 (1956), the Supreme Court of New Jersey held that the plaintiff barbers' union was entitled to replevy its union shop card displayed in defendants' barber shop at the expiration of the collective bargaining agreement where no new contract was executed primarily because the *proprietor working barber* (even though he employed others) rejected the union demand that he become a member of the union. The Court said:

> ". . . support may be found in the cases for the union's view that (absent restrictive legislation) there is no general public policy against a requirement that employers, who actually work with the tools of their trade alongside their employees, must become members of the union and support it at least to the extent that their interests coincide."

I further believe that the conduct of the union is proctectd by the Fourteenth Amendment to the Constitution of the United States. It is still the law that a *blanket*

prohibition against all forms of peaceful picketing is a violation of the Fourteenth Amendment. This is recognized even in *International Brotherhood of Teamsters, Local 695 v. Vogt*, 354 U.S. 284, the most stringent of all the recent cases. Starting with *Thornhill v. Alabama*, 310 U.S. 88, the Supreme Court of the United States first enunciated the doctrine that picketing is constitutionally protected as an exercise of the right of free speech and this doctrine was further expanded even where a direct employer-employee relationship was not involved. *American Federation of Labor v. Swing*, 312 U.S. 321. In *Bakery and Pastry Drivers v. Wohl*, 315 U.S. 769, it was held that New York could not constitutionally prohibit a union from picketing bakeries in an effort to have independent peddlers, who bought from the bakeries, conform to union standards. The common impression, however, is that *Thornhill* and *Swing* were rendered virtually innocuous by *Vogt*. If anything need be said outside of *Vogt* itself to demonstrate that this is not so, it would be found in the recent decision reversing the decision of the Supreme Court of Kansas in *Newell v. Chauffeurs Teamsters Local 795*, 181 Kan. 898, 317 P.2d 817. There the Supreme Court of Kansas held that the picketing was coercion simply because it was aimed at the strangulation of the employer's business for the purpose of hastening the employer's recognition of the union's demands. The Court said "Coercive picketing is unlawful and contrary to the public policy expressed by the legislature of Kansas". In reversing, 356 U.S. 341, the Supreme Court of the United States said "PER CURIAM—The petition for writ of certiorari is granted and the judgment of the Supreme Court of Kansas is reversed. Thornhill v. Alabama, 310 U.S. 88, 98."

By way of summary, then, it would appear that a state court can, so far as the Federal Constitution is concerned, enjoin picketing in a particular case if the picketing has an objective which violates the legitimate public policy of a state. However, a state may not issue a blanket

injunction against all picketing. Nor may a state constitutionally equate picketing itself with coercion or with a violation of state policy. Organizational purposes are always a proper objective of picketing and hence picketing for such purposes is constitutionally protected and cannot be enjoined by a state.

The record more than adequately supports the Finding that the picketing here had as its purpose the peaceful inducement of the plaintiff to join the union. The plaintiff testified that the union representative "wanted me to join the Union". There is absolutely no dispute in this case as to the sole object of the union's conduct, that of persuading the plaintiff to join the union. The picketing consisted only of two men walking up and down in front of plaintiff's barber shop. There was admittedly no violence, no threats contemporaneous with the picketing. Yet the Chancellor and the court below labeled this picketing "coercive". The *Chancellor* found that the picketing constituted "coercion" because it was aimed at securing plaintiff's membership in the defendant union.

The *court below* in its opinion on the defendant's exceptions conceded that the purpose of the picketing was organizational and in the same breath declared that its purpose was unlawful:

> "The immediate purpose of this picketing is to organize a self-employed barber who has no employees. The actual purpose, however, appears to be union control of prices and hours of all the City's barber shops by completely organizing the trade. Such is not a legitimate union objective and constitutes an unlawful purpose."

It is impossible not to conclude that the court below equated peaceful picketing for organizational and advertising purposes with coercion. That is precisely what we have said times without number it may not do. It amounts

to a blanket proscription of all peaceful picketing. There was no evidence of intent to control prices.

It seems to me that the broad sweeping injunction in this case would prevent the union even from passing out pamphlets describing the status of its relation to Grimaldi or even standing on street corners away from Grimaldi's premises to tell the truth about him. I do not believe that Mr. Grimaldi is *sui generis*. He is not anarchic like Robinson Crusoe before the coming of Friday. For the same reason that the rights of the union and its membership are not absolute neither are Grimaldi's. A proper accommodation of both, in my view, would require us to reverse this decree.

Hence, I dissent.

Mr. Justice Cohen joins in this dissenting opinion.

Appendix "B"

UNITED STATES CONSTITUTIONAL AMENDMENTS I AND XIV

AMENDMENT 1

Congress shall make no law respecting an establishment of religion, or prohibiting the free exercise thereof; or abridging the freedom of speech, or of the press; or the right of the people peaceably to assemble, and to petition the Government for a redress of grievances.

AMENDMENT 14

Section 1. Citizens of the United States—

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws.

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IN THE

Supreme Court of the United States

October Term, 1959. No. 442.

LOCAL NO. 9, JOURNEYMEN BARBERS, HAIRDRESSERS AND COSMETOLOGISTS INTERNATIONAL UNION; EDWARD MAGRISE, President; VINCENT PACE, Secretary; AFL-CIO; JOSEPH MOLLE and JAMES FRANGELLI,

Petitioners,

vs.

LOUIS J. GRIMALDI,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF PENNSYLVANIA.

BRIEF FOR RESPONDENT IN OPPOSITION.

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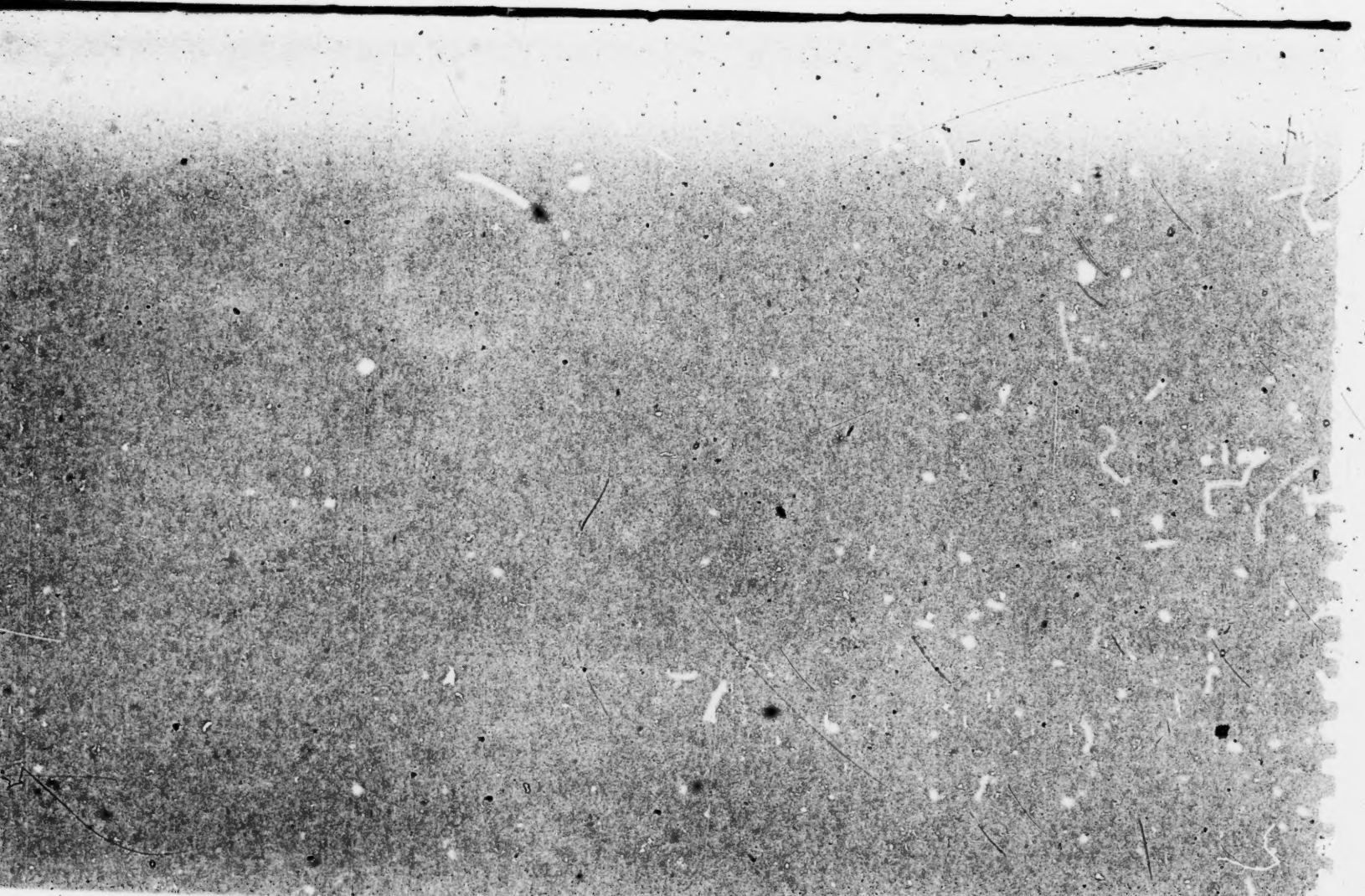

INDEX

PAGE

Opinions Below 1

Jurisdiction 2

Questions Presented 2

Statutes Involved 3

Statement of the Case 3

Argument 5

I. The Decision Below Is Correct 7

II. The Questions Here Have Been Previously Decided By This Court; the Lower Court Decision is in Accord Therewith 9

III. This Court Has Frequently Upheld The Enjoining of Peaceful Picketing Where It Invades a State's Public Policy 10

Conclusion 14

Appendix 15

Pertinent Provisions of State Statutes Involved 15

CITATIONS

CASES:

American Federation of Labor v. Swing, 315 U. S. 321 (1940) 10

Bakery & Pastry Drivers Local v. Wohl, 315 U. S. 769 (1942) 10

Brown v. Sucher, 258 Wis. 123, 45 N. W. 2d 73 (1950) 11, 12

PAGE

Building Service Employees International Union v. Gazzam, 332 U. S. 532 (1950) 12

Cafeteria Employees Assoc. v. Angelos, 320 U. S. 293 (1943) 10

Carpenters & Joiners Union of America v. Ritter's Cafe, 315 U. S. 722 (1942) 10

Giboney v. Empire Storage & Ice Co., 336 U. S. 490 (1949) 13

Hughes v. Superior Court of California, 339 U. S. 460 (1950) 13

International Brotherhood of Teamsters v. Hanke, et al., 339 U. S. 470 (1950) 2, 9, 10, 12

International Brotherhood of Teamsters v. Vogt, 354 U. S. 284 (1957) 13

IEBW Case, 339 U. S. 694 (1951) 13

Kovacs v. Cooper, 336 U. S. 77 (1949) 13

Milkwagon Drivers Union vs. Meadowmoor Dairies, 312 U. S. 287 (1940) 13

Neville v. Chauffeurs, Teamsters Local, 356 U. S. 341 (1958) 13

Pappas v. Local Joint Board, 374 Pa. 34, 96 A. 2d 915 (1953) 7

Pappas v. Stacey, 151 Me. 36, 116 A. 2d 497 (1955); cert. denied, 350 U. S. 870 (1956) 13

Senn v. Tile Layers Union, 301 U. S. 468 (1937) 11

STATUTES:

Pennsylvania Labor Anti-Injunction Act; Act of June 2, 1937, P. L. 1198 (43 Purd. Stat. 206) 5, 6, 15, 16

Pennsylvania Labor Relations Act; Act of June 1, 1937, P. L. 1168, (43 Purd. Stat. 211) 5, 6, 15, 16

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BRIEF FOR RESPONDENT IN OPPOSITION.

OPINIONS BELOW.

The Opinion of the Court of Common Pleas No. 5 of Philadelphia County (R-162) is unreported. The Opinion of the Supreme Court of Pennsylvania is reported at 397 Pa. 6 (1959).

JURISDICTION.

The jurisdictional requirements are adequately set forth in the Petition.

QUESTIONS PRESENTED.

1. Is the enjoining of a Labor Union from picketing the proprietor of a one man shop, without employees, with whom the Union has no labor dispute nor controversy over hours, wages, prices or working conditions, but whom the Union seeks to compel to affiliate with the Union, an invasion of freedom of speech, and a violation of First and Fourteenth Amendments of the Constitution of the United States.

2. Whether the doctrine laid down in International Brotherhood of *Teamsters vs. Hanke, et al.*, 339 U. S. 470 (1950), that is, that the State has the power, where there is no labor dispute, to declare a policy in favor of self-employers and to prohibit picketing of a business conducted by an owner without employees, and intended solely to compel him to become a union member, is still in effect.

3. Whether a State, in enforcing a public policy, announced either by its legislature or by its courts, can constitutionally enjoin peaceful picketing, aimed at thwarting that policy?

STATUTES INVOLVED.

The pertinent provisions of the Pennsylvania Labor Relations Act (43 Purd. Stat. 211, et sequi) and the Pennsylvania Labor Anti-Injunction Act (43 Purd. Stat. 206 a, et sequi) are set forth in the Appendix hereto at Ps. 15, 16.

STATEMENT OF THE CASE.

Louis J. Grimaldi, Plaintiff and Respondent in this case, operates a barber shop in Philadelphia, Pennsylvania, alone, and without employees. Respondent was also a member of, and Secretary of, the Pennsylvania League of Master Barbers, an educational and instructional non-profit corporation of Pennsylvania, having about five hundred members, mainly one-man shop barbers.

Defendant, Petitioner is styled a labor union but having various classes of membership, not exclusively employees.

In Philadelphia, there are approximately two thousand one-man barber shops, and between four hundred and five hundred shops where there are one or more barber employees.

Petitioner, through its agents, was in touch with Respondent initially in January, 1956, requesting him to join the Petitioner Union, and to bring with him the said League of Master Barbers. Respondent refused.

In March, 1956, Petitioner's agents held a meeting with Respondent and other officers of the Barbers League, requesting that they join Petitioner Union. Respondent and the League officers refused.

In April, 1956, Petitioner and its agents again met with Respondent and officers of the Barbers League and affiliation was again discussed. When Respondent and his group

still refused affiliation, Petitioner, through its agents, became abusive and threatening. Vile and vicious language was used to Respondent and his group, including threats of "the kiss of death," by picketing.

On July 31, 1956, Respondent's one-man shop was picketed. He suffered severe economic loss, undenied by Petitioner.

Equity action was begun on August 3, 1956, for an injunction, and following preliminary hearing, the pickets were withdrawn by agreement. Subsequently, hearing was held by a Chancellor, who found, after a full day of testimony, that there was no controversy as to terms or conditions of employment or of representation of employees. The Chancellor further found, from the testimony before him, that Petitioner, through its agents, had sought to intimidate Respondent, and the Barbers League, to affiliate with the Union by threats of force.

The exceptions of Petitioner to the Chancellor's Adjudication were argued before a Court en banc, and that Court upheld the Chancellor's findings, relying upon the principle that "the State has the power and the duty to take adequate steps to preserve the peace and to protect the privacy, the lives and the property of its residents, and that the State, in enforcing the public policy may constitutionally enjoin peaceful picketing aimed at preventing effectuation of that policy."

The Petitioner appealed to the Supreme Court of Pennsylvania, and after briefs filed; and oral argument, that Court upheld the Lower Court, stating that "the picketing in this case was not for organizational purposes and could not be for that purpose" and that "the picketing of a one-man establishment is an invasion of an American's freedom to determine his own economic destiny when he stands alone in an enterprise of his own." The Supreme Court of Pennsylvania further found that

> "The Local did not claim, and does not now claim, that Grimaldi was charging unfair prices or that he was

working unproper hours, or that he was undermining in any way the working conditions of journeymen barbers—those employed in other shops."

The policy of the "Pennsylvania Labor Relations Act," (Act of June 1, 1937 P. L. 1168, No. 294—Sect. 2) is recited as follows:

> "It is hereby declared to be the public policy of the State to encourage the practice and procedure of collective bargaining and *to protect the exercise by workers of full freedom of association, self-organization . . .*" (Emphasis supplied.)

The Pennsylvania "Labor Anti-Injunction Act" (Act of June 2, 1937 P. L. 1198—Sect. 1) recites "the public policy of this Commonwealth is hereby declared to be as follows:

> "a.) . . . The individual unorganized worker . . . *though he should be free to decline to associate with his fellows, it is necessary that he have full freedom of association . . .*" (Emphasis supplied.)

Each of these Acts, as is stated at length therein, was designed to encourage and protect collective bargaining between employees and employer, and to prevent injunctions where there is a dispute between employer and employees, where terms or conditions of employment are involved.

ARGUMENT.

The issue in this case is clear and precise.

There was no dispute between Petitioner Union and Respondent over hours, prices, working conditions or anything having to do with Respondent's operations. According to uncontradicted testimony, these were never discussed be-

tween the parties. Petitioner Union's sole dispute with Respondent, and with his fellow workers, was because he, and they, would not join the Union.

The economic conditions of the barbers, whether journeymen or self-employed, formed no part of the discussions between the Union representatives and the Respondent. The only demand of the Union was that Respondent join the Union, and when this demand was refused, the picketing followed. The only purpose of the picketing was, by economic strangulation of Respondent, to compel him to join the Union.

Respondent has no need for, nor desire to join, any organization which legally exists for the express purpose of providing the benefits of collective bargaining for employees in their dealings with employers.

The very heart of the labor movement is in collective bargaining. This right of employees to organize and to bargain collectively, achieved after a century of effort, is protected in Pennsylvania by its Labor Relations Act, and by its Labor Anti-Junction Act (Appendix pages 15, 16).

However, these self-same Acts which protect the employees in dealing with an employer, also protect the worker, so that the worker can "decline to association with his fellows" and he is granted "full freedom of association, self-organization."

The Pennsylvania Statutes appended hereto are exactly similar in language to the statutes of the State of Washington, on the same subjects and declared in the *Hanke* Case, 339 U. S. 470, and quoted in a footnote in the *Gazzam* Case, 339 U. S. 532, to be declaratory of the policy of that State in the protection of the proprietor, without employees, against picketing.

No organizational picketing was involved here. The right of employees to organize is unquestioned, and the right of union agents to attempt, by peaceful picketing, to organize employees so that the workers, as an organized group, can bargain collectively with the employer, is likewise beyond

doubt. These rights have been upheld many times by the Pennsylvania Supreme Court. But in upholding those rights, that Court has defined "organizational picketing" as

> "that is, to persuade non-union employees of an establishment to join a union." *Pappas vs. Local Joint Board*, 374 Pa. 34, 96 A. 2d 915, 916.

But there are no employees involved in this dispute between Petitioners and Respondent. Respondent is neither employer nor employee, and by organizing him into a union member, no rights of collective bargaining can be obtained for him. Respondent has no one to bargain with, or for.

No blanket injunction against picketing is here involved, but the protection of an individual worker, in his own business who is not in dispute with other workers in any manner whatsoever, is involved. Such worker is guaranteed protection by the legislative policy of the State, and in this case, the Courts of Pennsylvania have sought to carry out that policy.

The fallacy of Petitioner Union's position lies in the fact that by seeking to take into its membership, employees, employers, one-man operators, and anyone else connected with the business, it has ceased to be a Labor Union representing employees for bargaining purposes. However it seeks to retain all the benefits and protections of a Labor Union.

I.

THE DECISION BELOW IS CORRECT.

The Chancellor in the Court of Common Pleas of Philadelphia County heard all the evidence and found such evidence to be "overwhelming that the union was determined to use whatever force was required to march against their will the self-employed barbers into its 'employers guild,'" and that "the individual entrepreneur is entitled to protection against such coercion."

The Court en banc approved this finding and result, after a review of the testimony and oral argument.

The Supreme Court of Pennsylvania, with the record before it, and after oral argument, found that the Petitioner's picketing was not for organizational purposes and could not be for that purpose, that it was a flagrant violation of the law.

The Pennsylvania Supreme Court relies upon the *Hanke* Case, 339 U. S. 470. This case, protecting as it does, the self-employed against picketing, is actually not as favorable on its facts as is this case. In the *Hanke* Case, there was a dispute over hours of opening and closing. In order to obviate this dispute, the Union, by peaceful picketing, sought to compel Hanke and his sons, to join the Union. In the case at bar, there was no dispute whatsoever, over hours or anything connected with Respondent's conduct of his business.

The Supreme Court of Pennsylvania recognized this when it stated that "the Local did not claim . . . that Grimaldi . . . was undermining the working conditions of journeymen barbers—those employed in other shops."

Legislative protection was afforded "workers" who did not wish to associate in organization, by the statutes of Washington State, and this, in the *Hanke* case, was recognized by the Supreme Court of the State and by the United States Supreme Court. The very same protection, in the very same language, is granted by the Commonwealth of Pennsylvania, and its Supreme Court, following the *Hanke* Case, has given similar recognition.

The Supreme Court of Pennsylvania rejects Petitioner's contention that the picketing indulged in here, was an exercise of constitutionally guaranteed freedom of speech. But the Court recognizes that "while it is true that picketing is in the realm of free speech, it is by no means synonymous with talking." In this, the Court follows the many decisions of the Supreme Court of the United States, later herein discussed.

The Court further recognizes that picketing as a form of

communication is allowed where collective bargaining is involved but holds that there is, in this case, "no controversy between management and labor."

II.

THE QUESTION HERE INVOLVED HAS PREVIOUSLY BEEN DECIDED BY THE SUPREME COURT OF THE UNITED STATES AND THE DECISION OF THE SUPREME COURT OF PENNSYLVANIA IS IN ACCORD THEREWITH.

In *International Brotherhood of Teamsters vs. Hanke, et al.*, 339 U. S. 470, Justice Frankfurter speaking for the Court states the following:

> "The question is this: Does the Fourteenth Amendment of the Constitution bar a State from use of the injunction to prohibit the picketing of a business conducted by the owner himself without employees in order to secure compliance by him with a demand to become a union shop?"

In the *Hanke* Case, there was even a dispute over hours of opening and closing, which is not present in this case. Moreover, in the *Hanke* Case, the Washington statute protecting the worker's right to associate or to decline to associate is similar in language to the Pennsylvania statute.

The *Hanke* opinion further states:

> "Washington here concluded that, even though the relief afforded the Hankes and Cline entailed restriction upon communication that the unions sought to convey though picketing, it was more important to safeguard the value which the State placed upon self-employers, leaving all other channels open to the Union."

That the *A. F. of L. vs. Swing*, 312 U. S. 321; *Bakery & Pastry Drivers Local vs. Wohl*, 315 U. S. 769, and *Cafeteria Employees Union vs. Angelos*, 320 U. S. 293, cases, are not in point on this question is evidenced by the statement as to those cases in the *Hanke* opinion:

> "The power of a State to declare a policy in favor of self-employers and to make conduct restrictive of self-employment unlawful was not considered in those cases."

That picketing is not, per se, freedom of speech, is reasserted in the *Hanke* Case:

> "We must start with the fact that while picketing has an ingredient of communication it cannot dogmatically be equated with the constitutionally protected freedom of speech. Our decisions reflect recognition that picketing is 'indeed a hybrid.'"

III.

THE SUPREME COURT OF THE UNITED STATES HAS APPROVED THE ENJOINING OF PEACEFUL PICKETING BY A STATE WHERE A PUBLIC POLICY OF THAT STATE MIGHT BE NEGATIVED BY SUCH PICKETING.

The authority of the State to impose reasonable regulations upon picketing was early recognized by this Court. In *Carpenters and Joiners Union vs. Ritter's Cafe*, 315 U. S. 722 (1942), this Court said:

> "Where, as here, claims on behalf of free speech are met with claims on behalf of the authority of the State to impose reasonable regulations for the protection of the community as a whole, the duty of this Court is plain."

Petitioners place great reliance on the case of *Senn vs. Tile Layers Union*, 301 U. S. 468 (1937). In the Opinion by Justice Brandeis he notes that Senn "employed one or two journeymen tile layers and one or two helpers." It was not the situation of a one-man shop without employees. Furthermore, the Statute then in force in the State of Wisconsin authorized in the broadest manner picketing as publicity on a level with advertising and the Supreme Court of Wisconsin found that under the statute then in force the means employed and the end sought by the Union was legal under its then law. The distinction between the *Senn* Case and the case at bar is clear upon the reading of the following excerpt from Justice Brandeis' opinion:

> "The laws of Wisconsin, as declared by its highest court, permit unions to endeavor to induce an employer, when unionizing a shop, to agree to refrain from working in his business with his own hands—so to endeavor although none of his employees is a member of a union. *Whether it was wise for the State to permit unions to do so is a question of its public policy—not our concern.*" (Emphasis supplied.)

It is evident from the foregoing that even as early as the *Senn* Case, this Court felt that the determination of the validity or the invalidity of the picketing was a matter for the State to determine as a question of its public policy.

That the foregoing is a correct conclusion is evidenced by the Wisconsin Supreme Court opinion (the same State out of which the *Senn* Case arose) in *Brown vs. Sucher*, 258 Wisconsin 123 (1950). In that case where a sole proprietorship was involved and the Defendant was the representative of the Building Service Employees Union who had picketed, with others, Plaintiff's place of business, to induce the sole proprietor to join the Union, Justice Fairchild speaking for the Wisconsin Supreme Court affirmed the decision of the lower court, as follows:

> "The decision in the Circuit Court recognizes the purposes of the law with relation to labor disputes, and in accordance with that law protects the interest of the proprietor of a business operated by himself and so conducted that at the time there was neither a labor dispute nor reason for one."

The Opinion quotes from Justice Frankfurter's opinion in the *Hanke* Case, and refers to the *Senn* Case, reciting that the statutes of Wisconsin as to broad rights of picketing were amended subsequent to the *Senn* Case. The Opinion in *Brown vs. Sucher* further quotes from the *Hanke* Case in its reference to the *Senn* Case in which the following statement is made by Justice Frankfurter therein:

> "If Wisconsin could permit such picketing as a matter of policy it must be equally free as a matter of policy to choose not to permit it . . ."

It is submitted that the *Senn* Case clearly illustrates that the policy of the State, whether by statute or by court decision, relative to picketing, unless flagrantly abused, will not be disturbed by the Supreme Court of the United States, and that the statutes and the policy of the State should govern.

In the *Building Service Employees Union vs. Gazzam*, 339 U. S. 532 (1950), where an employer-employee situation was involved, and which was an appeal from Washington State, Justice Minton speaking for the Supreme Court of the United States, holds:

> "The State of Washington has by legislative enactment declared its public policy on the subject of organization of workers for bargaining purposes . . . under the so enunciated public policy of Washington, it is clear that workers shall be free to join or not to join the Union . . . to judge the wisdom of such policy is not for us; ours is but to determine whether a re-

straint of picketing in reliance on the policy is unwarranted encroachment upon rights protected from State abridgment by the Fourteenth Amendment . . . Abuse by workers or organizations of workers of the declared public policy of such an Act is no more to be condoned than violation of prohibition against judicial interference with certain activities of workers.

That the State, in enforcing some public policy, whether announced by its legislature or by its Courts, could constitutionally enjoin peaceful picketing designed to prevent effectuation of that policy, has been upheld by this Court in a long line of cases, of which the following are but some:

Kovacs vs. Cooper, 336 U. S. 77 (1949);
Giboney vs. Empire Storage & Ice Co., 336 U. S. 490 (1949);
Hughes vs. California Supreme Court, 339 U. S. 460 (1950);
IEBW Case, 339 U. S. 694 (1951);
Teamsters Union vs. Vogt, 354 U. S. 284 (1957);
Pappas vs. Stacey—Certiorari denied, 350 U. S. 870 (1956), 151 Me. 36, 116 A. 2d 497 (1955).

A reading of the Petition for Writ of Certiorari in the case of *Neville vs. Chauffeurs, Teamsters Local*, 356 U. S. 341 (1958), makes it clear that that case has no application to the case at bar.

In the *Neville* Case, two points were made in the Petition for Certiorari, the first that the question was for federal jurisdiction, as being governed by the National Labor Relations Act; the second was that there was no evidence of the violence required of picketing sufficient to bring it within the decision in *Milkwagon Drivers vs. Meadowmoor Dairies*, 312 U. S. 387, upon which the Kansas Supreme Court flatly relied.

It appears from the action of the Supreme Court of the United States in reversing that it approved one or both of

these propositions. However, neither the facts nor the result in the *Neville* Case are remotely concerned with this case.

There is no need for a new, all-clarifying decision by this Court on the question of picketing. The decisions of this Court are clear and unequivocal on the facts in this case.

CONCLUSION

For the foregoing reasons it is respectfully requested that the Petition for a Writ of Certiorari should be denied.

Respectfully submitted,

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October 21, 1959.

APPENDIX.

This Act shall be known, and may be cited, as the "Pennsylvania Labor Relations Act" 1937, June 1, P. L. 1168, No. 294, Section 1.

TITLE OF ACT.

An act to protect the right of employees to organize and bargain collectively, creating the Pennsylvania Labor Relations Board . . . providing for the right of employees to organize and bargain collectively . . .

a. Under prevailing economic conditions, individual employees do not possess full freedom of association or actual liberty of contract . . .

c. In the interpretation and application of this Act and otherwise, it is hereby declared to be the public policy of the State to encourage the practice and procedure of collective bargaining and to protect the exercise by workers of full freedom of association, self-organization, and designation of representatives of their own choosing, for the purpose of negotiating the terms and conditions of their employment or other mutual aid or protection, free from the interference, restraint or coercion of their employers . . ."

This Act shall be known and may be cited, as the "Labor Anti-Injunction Act" 1937 June 2, P. L. 1198, Section 1.

TITLE OF ACT.

An act relating to employees and organizations thereof; defining labor disputes; prescribing the procedure by which and the conditions under which injunctions may be granted in such disputes and the scope thereof.

In the interpretation of this act and in determining the jurisdiction and authority of the courts of this Commonwealth, as such jurisdiction and authority are defined and limited in this act, the public policy of this Commonwealth is hereby declared as follows:

(a) Under prevailing economic conditions developed with the aid of governmental authority for owners of property to organize in the corporate and other forms of ownership association, the individual unorganized worker is commonly helpless to exercise actual liberty of contract and to protect his freedom of labor, and thereby to obtain acceptable terms and conditions of employment, wherefore, though he should be free to decline to association with his fellows, it is necessary that he have full freedom of association, self-organization, and designation of representatives of his own choosing to negotiate the terms and conditions of his employment, and that he shall be free from the interference, restraint or coercion of employers of labor or their agents in the designation of such representatives or in self-organization or in other concerted activities for the purpose of collective bargaining or other mutual aid or protection.